IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 1030 of 2001
(Old No.1576 of 1999)

Dugdh Utpadak Sahkari Sangh Ltd.
Pataldevi Almora through
P.O. Almora
Tehsil Almora
District Almora ...Appellant.

Vs

Subhash Malhotra S/o Jai Karan Das
R/o Narain Tewari Dewal
Almora ... Respondent.

Sri V.K.. Bisht, learned Senior Advocate assisted by Smt. Seema Serohi, learned counsel for the appellant.
Sri S.S. Yadav, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This second appeal has been filed by Dugdh Utpadak Sahkari Sangh Ltd. against the judgment and decree passed by the District Judge, Almora vide judgment and decree dated 09.09.1999 in Civil Appeal No. 11 of 1998 arising out of Original Suit No. 46 of 1996.

2- Brief facts of the case are that the plaintiff/respondent – Subhash Malhotra filed a suit before the court of Civil Judge, Almora for recovery of Rs. 12,972.75. The plaintiff/respondent does the transport business and in pursuance of that business, the plaintiff/respondent submitted a tender in this regard in the Department (Dugdh Utpadak Sahkari Sangh – appellant) and the plaintiff / respondent got the tender in the year 1992 @ Rs. 2.40 paise per km which was revised to Rs. 2.75 and further 2.85 per km. The plaintiff/respondent did the business with the defendant/ appellant upto 24.08.1996.

3. It is pertinent to mention here that at the beginning the defendant/appellant awarded the contract to the plaintiff/respondent from the distance from Almora Milk Society to Kakrighat @ 125 Kms but thereafter he verified the distance from Almora Milk Society to Kakrighat which comes to 125 kms thereafter w.e.f. 01.03.1996 the defendant/appellant started deducting the amount from the bill of the plaintiff/respondent and awarded him the amount for 122 km. The defendant/appellant sent a letter dated 11.05.1996 stating therein as to why, they have deducted Rs. 12,972.75 whereas the distance was 125 Kms from the Headquarters. Thereafter, the notice was given by the plaintiff/respondent through his counsel under Section 117 of the Co-operative Societies Act, which was served on the defendant/appellant on 21.05.1996 stating therein to pay an amount of Rs. 6,853.15. In spite of the notice the defendant/appellant deducted an amount of Rs. 12,972.75.

4. It has been pleaded in the suit by the defendant/appellant that the distance from Kakrighat to Headquarter was 122 Kms whereas the plaintiff/respondent claimed it to be 129 Kms. As the excess charges were received by the plaintiff/respondent, therefore, the defendant/appellant has deducted an amount of Rs. 12,972.75. On the pleadings of the parties, following issues were framed by the court below:-

1. Whether the plaintiff is entitled to recover from the defendant the amount of Rs. 12,972.75 and interest thereon @ 18%?
2. Whether the distance from Almora Milk Society to Kakrighat is 122 Kms. To and from and the payment to the plaintiff was made correctly?

3. Whether the notice under Section 117 for the Co-operative Societies Act is illegal?
4. To what relief, if any, is the plaintiff entitled?
5. Whether in view of the provision of arbitration in U.P. Co-operative Societies Act, 1965, the suit is not cognizable by this Court and also whether there was any contract between the parties regarding that?
6. Whether even after giving of the notice by the plaintiff, the non-mentioning of the arbitration clause in the written statement, the provision of arbitration was forgiven?

5. Learned trial court after having considered the entire evidence available on record and hearing learned counsel for the parties was pleased to decree the suit filed by the plaintiff/respondent vide judgment and decree dated 13.04.1998. The trial court also directed the defendant/appellant to pay the decretal amount along with 18% interest thereon.

6. Feeling aggrieved by the aforesaid judgment and decree passed by the trial court, an appeal was preferred by the defendant/appellant which was partly allowed vide judgment and decree dated 09.09.1999. The lower appellate court decreed the suit for the recovery of an amount of Rs. 12,972.75 but reduced the interest to an extent of 6% interest instead of 18% to be paid to the plaintiff/respondent.

7. Feeling aggrieved by the aforesaid judgment and decree passed by the lower appellate court the second appeal has been preferred before the Allahabad High Court which has been transferred to this Court after creation of new State.

8. The High Court admitted the appeal on the following substantial question of law:-

> Whether there as jurisdiction to entertain the dispute between the parties when contract for the business purpose as per Co-operative Societies Act or not?

9. Heard Sri V.K. Bisht, learned Senior Advocate assisted by Smt. Seema Serohi, learned counsel for the appellant, Sri S.S. Yadav, learned counsel for the respondent and perused the record.

10- The only point in controversy in the instant case is whether the civil court had jurisdiction to try the suit and adjudicate the dispute between the parties or not. In order to decide the controversy it would be relevant to peruse the provision of Section 70 of the Co-operative Societies Act which runs as follows:

> "70 Disputes which may be referred to arbitration –
>
> *1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant for a society arises –*
>
> *a. among members, past members and person claiming through members, past members and deceased members; or*
>
> *b. between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent*

or employee of the society, including any past officer, agent or employee; or

c. *between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, deceased employee of the society; or*

d. *between the co-operative society and any other co-operative society or societies;*

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

[Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.]

2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution management or the business of a co-operative society, namely-

a. *claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;*

b. *a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not:*

c. *a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent or employee, whether individually or collectively and whether such loss be admitted or not; and*

d. *all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.*

3) If any question arises whether a dispute referred to the Registrar under this Section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

Election dispute – *If a dispute relating to the constitution of the Managing Committee of a co-operative society other than an apex society is raised, the Registrar has no choice in the matter. He can not either decide it himself or refer to any other authority or person except to the District Magistrate. The District Magistrate is appointed as one of the authorities to dispute in question and he ash further been empowered by Rule 230 (e) to decide he dispute himself or to appoint anyone of the S.D. Ms. under him to decide the same.*

Reference - *Once the District Magistrate is appointed a Registrar for purposes of Section 70 he gets power to entertain the reference.*

Dispute regarding removal from membership of Managing Committee can be referred to the District Magistrate under Rule – 229 (2)(b) and the District Magistrate has jurisdiction to determine the dispute.

Registrar: Meaning of – *The express "registrar' includes not only the person who has been appointed as registrar under the Act but also persons who have been appointed to assist the registrar as also those on whom the powers of registrar have been conferred under Section 3(2) of the Act.*

Writ Petition *- The Act and the Rules provide adequate alternative remedy for challenging the constitution of the committee of Management or election of office bearers of the co-operative society. Hence, writ petition is not maintainable.*

Where the election had taken place and the petitioner had challenged the very basis of the election, that is, electrol roll which was erroneously prepared alternative remedy under Section 70 was not bar to writ petition."

11- From bare perusal of the aforesaid provision of the Act it becomes quite clear that firstly the dispute should be related to the constitution, management or the business of Co-operative Society other than a dispute regarding disciplinary action taken against paid servant of the society.

12. Further this provision provides that the dispute should be among the members, past members and person claiming through members, past members and deceased members or between the member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee.

13. The provision further envisages that the dispute between the society or its committee and any past committee,

any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, deceased employee of the society or between the co-operative society and any other co-operative society or societies.

14. In case, if the disputes are between the aforesaid classes of persons only the civil court will have no jurisdiction to try the suit.

15. In the instant case, the dispute is not covered by the provision of Section 70 of the Co-operative Societies Act as in the case in hand the suit was filed by the plaintiff/respondent for recovery of an amount on the ground that the plaintiff/respondent is a transporter and in pursuance of his business he submitted that tender to the defendant/appellant for the award of he contract for collecting milk from different places and after his tender was passed he performed is work. Subsequently, he claimed the money in pursuance of the work done by him.

16. Both the courts below have recorded the concurrent findings of fact observing therein that the defendant/appellant failed to pay the amount claimed by the plaintiff/respondent as was agreed between the parties.

17. How so erroneous the findings of fact is there, the same cannot be interfered with while exercising the jurisdiction under Section 100 of the C.P.C. in the second appeal. Moreover, in view of the specific provision of Section 70 for the Cooperative Societies Act, 1965, the present dispute in the instant case is not covered. The courts below have

jurisdiction to entertain try the instant suit. The substantial question of law is decided accordingly.

18. Accordingly, the appeal does not bear any merit and is liable to be dismissed.

19. The appeal is dismissed.

(B.C. Kandpal, J)

11-09-2006
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